

From: Devesh Bahl <dbahl@kognetics.com>

To: Rajeev Vaid <rvoid@stratesphere.com>, "Inder Thukral" <ithukral@kognetics.com>

Subject: Re: Stratesphere Documents

Date: 2018-08-12 11:17:48 -0400

Importance: Normal

Attachments: Doc1.docx

Guys - Here are my comments. I have not been part of your discussions and deliberations or based on the same, your thoughts/comments on the docs, so I my comments are based on my reading of these. We should definitely take US Tax opinion on the structure and implications on us.

Could all share there comments so that we can review them before the call.

In the meanwhile, I am preparing the annexures.

Lets speak tomorrow

Thanks

From: Rajeev Vaid <rvoid@stratesphere.com>

Date: Saturday, August 11, 2018 at 4:37 PM

To: Inder Thukral <ithukral@kognetics.com>, Devesh Bahl <dbahl@kognetics.com>

Subject: Re: Stratesphere Documents

Gents:

Enclosed is the updated checklist on all documents.

In addition to the following per my previous note:

Exhibit A: Bill of Sales

Exhibit B: Assignment and Assumption Agreement

Exhibit C: Trademark Assignment

Exhibit D: Trademark Assignment

Certificate of Existence of Kognetics Inc (Section 2.02f

Section 2.02h...Board Resolution of Kognetics Inc

Section 2.02i...MSA between Pythhos Entities and Kognetics Inc

Section 2.02j...Legal Opinion

Section 2.02k...Disclaimer Document

We would need to get the Schedules also done. Please refer to this checklist and the documents to do the following:

1. Devesh, Rajeev: To get the documents ready...I have marked the segregation
2. APA: All to send comments to me
3. Final Consolidation and discussion amongst us: Monday Aug 13

We should send out the marked up documents with Exhibits and Schedules on Monday

Thanks so much



Rajeev

From: I <rvoid@stratesphere.com>

Date: Sunday, August 5, 2018 at 4:24 PM

To: "ithukral@kognetics.com" <ithukral@kognetics.com>, Devesh Bahl <dbahl@kognetics.com>

Subject: Stratesphere Documents

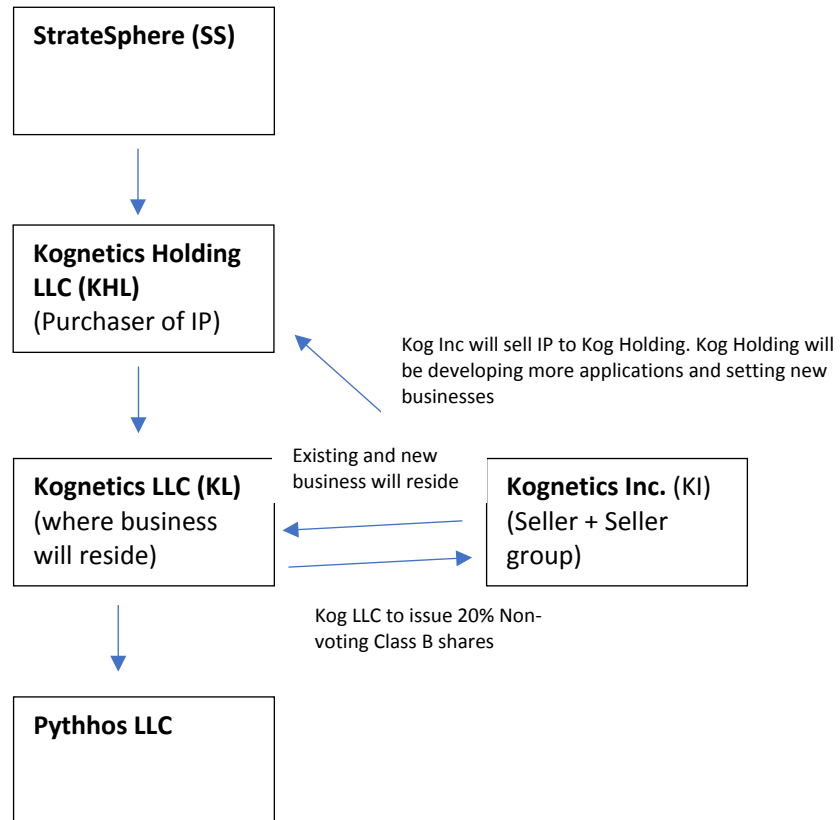
Enclosed are the final documents for review. Please go through so that we can complete all this in the coming week. Following will be the steps still from our side:

1. Send the Kognetics Pythhos MSA and SoW
2. Registration from our side of Copyright and Trademark

Thanks

Rajeev

Asset Purchase Agreement



- SS will invest \$1Mn in KHL through funds or business
- SS will aid KHL to raise upto \$20Mn part of the program
- We (Kog Inc.) will sell our IP to KHL, while we will hold a) 20% non-voting shares Class B shares in Kog LLC
- KHL will develop further applications in KHL and setup entities (Kog KSA)

Observation:

- (a) We should hold voting rights and equity in the entity where our IP resides. SS is purchasing our IP for free and investing \$1Mn for future business ie we are not taking the funds out of the business to address our existing liabilities or for ourselves.
- (b) The value of the entity will be created where the IP resides and not in the operating business, through a) developing further applications to enhance our IP and b) new business.
- (c) We agreed that the value of our equity will enhance with additional revenue that SS will bring in. Therefore, either SS pays us for our IP or we hold equity in the HoldCo.
- (d) We do not have say in the valuation as SS raises funds in KHL
- (e) Our equity gets diluted as KHL raises further equity – we should get min of 20% equity in HoldCo. As we are not getting any value for our business and IP, we should have min. holding

- (f) All SS business should be routed through KogLLC; else, we will be left holding only part of the value of the group...or tomorrow, SS could decide to route the business through other group companies and leave us hanging
- (g) There is reference in the other documents on SS giving Class A shares to KogInc, however, it has never been quantified
- (h) **SS is committing to only \$1Mn in funding over 12 months; however, our requirement is \$2.5Mn as per our plan itself. In case we take SS contracts GM, the requirement is still \$1.8Mn (without any working capital). As I see, there is no Purchase Price for the APA other than the 20% of undiluted equity in an operating entity, with no voting rights. We are therefore giving up our IP for free and not getting equity in the entity that has the IP**
 - **What about Working Capital**
 - **Commitment for further equity**
 - **Additional funds in case the requirement goes up; especially as the need to move to the US is only of SS and not us**

S 1.03 – it only assumes liabilities post closing; we should get credit for atleast 2018 liabilities. Further, we have spent hours on the SAGIA proposal and industry mapping, that should be compensated or adjusted in the pre-funded amount

As not all contracts could get assigned ie consulting contracts, how to differentiate the liabilities against those

S1.05 – how to quantify the Purchase price

S1.06 (a) ***“Nothing in this Agreement or any of the Related Agreements shall be deemed to constitute an assignment or an attempt to assign any Contract to which Seller is a party if the attempted assignment thereof without the consent of the other party to such Contract would constitute a breach thereof or affect in any way the rights of Seller thereunder”***

All our contracts do not allow assignment and would therefore require it to be sought from our customers

(b) ***“Purchaser may, but shall not be required to, waive the closing conditions as to any such Material Consent and either: (i) elect to have Seller continue to use its commercially reasonable efforts to obtain the Material Consent; or (ii) elect to have Seller retain that Restricted Material Contract and all liabilities arising therefrom or relating thereto”***

Cub clause (ii) should be deleted or watered down

S1.07 – What is the Purchase Price – it says as per Schedule 1.07 (not available). Need to understand tax implications – now and in the future

S1.08 – Royalty

- We should try to increase the yearly royalty of \$100k; this will not be sufficient to take care of our past liabilities
- If Kog Inc is not the operating entity, then the royalty will be taxable in it's hands as there would not be any associated expense in the year. I agree that this is the correct structure as we can have a royalty contract between PTLLC and Kog Inc for the work already done

- this is our business plan; it talks about collected revenue...we should have atleast 10% leeway for collections due to customer credit period and a slab on the achievement of target revenue..starting at 80%
- Collected revenue (as per definition under Article X), means cash receipts from the business of the applicable year ie for 2019, no previous year collections will be considered, which would be impossible

S1.09 – Additional Shares

- (a) we should have ability to earn back more of our equity
- (b) we should have min of undiluted equity holding
- (c) there is an option of selling either KogLLC or KHL; if KogLLC gets sold and our holding is only in KogLLC, we will not be able to get full value. Also, as we don't have any voting rights in KogLLC, we will be left to the mercy of SS on the valuation or how we are treated

S1.09 – SS Funding Requirement

- (a) \$1Mn is the funding provided for first 12 months for going forward business...and not the value of our business.
 - a. COGS for the LM/AMG etc is assumed to be 25%. As RV/IT are spending 50% of their time in for these contracts, their COGS should be included in this calculation...as their time spent is part of the revenue. What about SG&A...office space, travel, capex etc. Certain % should be given credit for. Going forward, some contracts which come in within the 12 months, their COGS could be different
 - b. Our business requirement is ~1.5Mn over the next 12 months as per plan. What about working capital; we have not assumed any WC
- (b) SS will **support** KHL to raise upto \$20Mn; there has to be some schedule/commitment.
 - a. As SS is directing the show, what is our incentive to move cost to the US if we don't get any benefit from it; in fact the cost goes up

S1.11 – SS Option – have the option of purchase our equity at FMV??? Is it mandatory or any caveats?

S2.02 (b) Assuming the closing takes place by Aug 31 and we assign the contracts to KogLLC, we will have to pay KogLLC revenue for Sept which we collected upfront for the quarter ie in July

(c) (i) We have not yet filed for Trademark – we could have KogLLC directly apply for Trademark, rather than KogInc applying for it and then assigning it once we receive it in 4 months. Consult with their lawyers on what documentation would be agreeable with them

(ii) Copyright – I checked from several sources, copyright is only for work of art, written etc. Does not relate to software

(f) we have agreed that all Pythos entities would be excluded. For KogInc, I will check with CT Corp on Monday, how to procure the certificate of good standing

(h) (j) Legal Opinion – we will have to take the legal opinion from a US lawyer; if we have get this certificate, the onus will lie with us. Further, not only will this add cost, we would have to appraise our US lawyers of the full process and they would have to

do their DD on our business before they would be able to give their opinion. We should leave it to Ice Miller to tell us what they want and to satisfy themselves.

S3.01 (e) Required Approvals – lets deliberate

S 4.04 – Financial Statement – we had filed financial statement for 2017 based on invoiced revenue; we would require to refile based on accrued/MRR for Q1, 2018

S4.05 Tax Matters – Foreign Person; who are the signatories to the APA...would this be subject to withholding tax in case RV signs. Take opinion from Katie

S4.06 (h) (i) ***Without limiting the foregoing, Seller has neither themselves, nor caused, authorized, or permitted any other Person to have, licensed, distributed, or disclosed, and knows of no licensing, distribution, or disclosure of, any Source Code to any third party, and Seller has taken commercially reasonable physical and electronic security measures to prevent disclosure of any Source Code.*** What about UTC, DBS, DBS – do they have any such requirement?

(j) KN/HS – are they author of any such work of authorship; we should take their individual sign-off

S4.12 Customers – list as at May 31, 2018? We don't have renewed contracts from USA and Code. ***None of the customers listed on Schedule 4.12 has indicated, in writing, and no Seller has Knowledge, that any such customer will stop, or materially decrease the rate of, doing business with the Seller***

S4.14 – Transfer Taxes – we will have to identify the purchase value and transfer tax, which will be our liability

S4.16 (b) – Seller's lenders

S9.02 – Non-Compete – 5 yrs??? There should be some value provided for non-compete

Article X –

Documentation – what documentation can we provide?

Excluded Liabilities –

(a) what about MS liabilities, Crunchbase, AWS etc. We do need Working Capital

(e) is not carrying forward any liability to employees for accrued leaves, gratuity etc

Pre-Closing Funded Amount – Define Working Capital; we have worked in the past for SS, including Industry Mapping for which there is an agreement to pay \$100k or SAGIA proposal (including OPEs) and other projects

Pythos Affiliate – delete

Article XI

S11.03 Trademark and Copyright – we will issue them a letter renouncing our right to the trademark

Kognetics Holding LLC

None

Confidential and Non Compete

10© There is a non-compete to work for any similar company for a period of 2 years. If this is to be signed by all employees, this would not allow any employee to work for any similar company

Stratesphere

S 9.16 (a) – is Kognetics Inc getting any Class A shares in Stratesphere

(b) talks about RV and IT having shares in KogLLC and then talks about Class A shares held by Kognetics Inc and forfeiture if any of the two terminate their employment (with or without cause) till KogLLC has achieved \$25Mn revenue. There should be a severance clause for all

We should get copy of the full SS Operating Agreement

Quitclaim IP assignment

- Which entity will sign this?
- Definition of what is being assigned as per Exhibit A

Clause 2 – Consideration...it says \$1??? IP is worth only \$1?

Kognetics LLC

Observation

- the **Manager** of this entity is SS LLC, through Tariq. We should have full control of this entity
- how will Transfer Pricing take place between KogLLC and PTLLC...and then to PTPL
- Targeted Capital Account – need to understand this better
- What happens to our share in case of no liquidation or sale by 2023

4.03 – Class B Units

(a) Class B is for Profit Interest only. Need to understand the implication of Rev Proc 93-27 and Rev Proc 2001-43 on KogInc and each one of us individually. Do we need to file election 83(b)

4.05 (a) – Class B is for Profit only and no interest in Capital Interest

(b) Impact of Participation Threshold on Class B shares

© Safe Harbor election, if the company elects to adopt Safe Harbor for Class B shares, implication of the same

5.01 and 5.02– Allocation of Profits and Losses – need to understand this section better from a tax Consultant. 5.04© states that each member understand the tax consequences

6.01 – Distribution of profit will be done in priority to capital contributed. As KogInc has not contributed any capital, it will not be paid any profit till such time as KHL has their capital returned.

In other words, we cannot take any savings to take care of our past liabilities. How will these be addressed, especially EXIM yearly payout and settlement, if any

6.02 – same as 6.01; additionally, in case of capital event, the capital of KHL will first be returned

6.05 – The manager, in his sole discretion, can without any distribution

7.03 Authority of Manager – We should be the manager of KogLLC

7.05 – Payment of Manager's expenses

8.03 (a)– Business Activities of Members – it says that SLLC and KHL may conduct activities which in competition to KogLLC. This could result in diversion of business away from KogLLC

c) However, there are restrictions on KogInc doing similar business

9.05 – KHL is a C Corp for tax purposes, similarly KogLLC should be a C Corp and not a partnership

The full operating agreement needs to be reviewed by a US lawyer and Tax advisor for us to better understand the implications.

Further, we need to understand how

a) we will control operations

b) how past liabilities will be addressed, especially EXIM yearly payouts

c) we being on the board of both KogLLC and KHL